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09/901,279	07/09/2001	Kimikazu Fujita	NAK1-BP41	7575

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EXAMINER

SHEPARD, JUSTIN E

ART UNIT	PAPER NUMBER
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2623

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/901,279	Applicant(s) FUJITA, KIMIKAZU	
	Examiner Justin E. Shepard	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,9,11,12,14-24 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,9,11,12,14-24 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/2/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/2/08 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 9, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of "the preceding time period being longer than a time period that is necessary for transmitting a program data of the specific program **more than once** during the part of the broadcasting bandwidth for the preceding time period allotted to the specific program," (emphasis added) is not found in the specification.

Claim 29 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation of "repeatedly transmit, as an event message **independent of the specific program**" (emphasis added) is not found in the specification.

Response to Arguments

Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The preamble of the claims states a "program that is readable for a computer in a broadcasting apparatus," while the specification (paragraph 173) states that this program could be distributed on a network, which would constitute a non-statutory wave or signal. Thus the medium is defined as a signal and thus not statutory.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering in view of Swix.

Referring to claim 24, Eldering discloses a broadcasting method for reducing television receiver latencies in displaying an interactive content portion of broadcast television commercials, the method comprising the steps of:

assigning a television program to a first time slot and a commercial to a second time slot immediately after the first time slot (figure 5);

allocating a first portion of the available bandwidth of the first time slot to audiovisual content of the television program (column 10, lines 37-45);

allocating a second portion of the available bandwidth of the first time slot to a specific program having interactive content for a commercial (column 10, lines 37-45; column 6, lines 40-44); so that the second portion of the available bandwidth of the first time slot is narrower than the first portion of the available bandwidth of the first time slot, the first time slot being longer than a time period necessary for transmitting a program data of the specific program having interactive content for the commercial more than

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once during the second portion of the available bandwidth of the first time slot (column 7, lines 29-37);

allocating a first portion of the available bandwidth of the second time slot to the specific program (figure 5; column 10, lines 37-45);

allocating a second portion of the available bandwidth of the second time slot to audiovisual content of the commercial (figure 5; column 10, lines 37-45);

transmitting the audiovisual content of the television program during the first time slot (figure 5; column 10, lines 37-45));

repeatedly transmitting the specific program during the first time slot (column 10, lines 37-45);

transmitting the audiovisual content of the commercial during the second time slot (figure 5; column 7, lines 29-37; column 10, lines 37-45); and

repeatedly transmitting the specific program during the second time slot (figure 5),

transmitting a script for storing the specific program (column 6, lines 40-44),

transmitting a script for executing the specific program (column 7, lines 29-37 and 65-67), and

receiving and storing the specific program at the television program (column 6, lines 40-44).

Eldering does not disclose a method for transmitting the data in a carousel format.

In an analogous art, Swix teaches a method for transmitting the data in a carousel format (column 9, lines 32-44).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the carousel transmission taught by Swix to the method disclosed by Eldering. The motivation would have been that commercials are normally repeated during a single day of broadcasting, where a carousel format allows for a efficient way to transmit the data.

2. Claims 1, 4, 9, 11, 12, 14-23 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering, U.S. Patent Number 6,615,039 in view of Suzuki in view of Swix in view of Allibhoy.

Referring to claim 1, Eldering discloses a broadcasting apparatus (column 2, lines 35-38; figure 2, parts 211 and 209) that broadcasts a specific program to which a reproduction time period between a starting time and a finishing time is specified (figure 7, box labeled "PROGRAMMING"; figure 9; Note: the time for inserting the advertisement listed in the "Insert Time" column indicates that the program from figure 7 must have a planned start and stop time), the reproduction being performed by a receiving apparatus (figure 2, part 209), the broadcasting apparatus comprising: allotment unit operable to allot a broadcasting bandwidth for the reproduction time period to the specific program (column 9, line 67, column 10, lines 1-3) and allotting a part of the broadcasting bandwidth for a preceding time period immediately before the reproduction time period to the specific program and the other part of the broadcasting bandwidth to another program (column 10, lines 2-3, 8-10; figure 7, part AD1 and signals running from part 802 to 806); so that the part of the broadcasting bandwidth for

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the preceding time period allotted to the specific program is narrower than the other part of the broadcasting bandwidth allotted to another program, the preceding time period being longer than a time period that is necessary for transmitting a program data of the specific program more than once during the part of the broadcasting bandwidth for the preceding time period allotted to the specific program (column 7, lines 29-37);

script generation unit operable to generate, (a) when the receiving apparatus receives an event message for instructing storage, a script for storing program data of the specific program in a storage unit of the receiving apparatus (column 7, lines 28-30; column 10, lines 8-10 and 57-62),

an event message generation unit operable to generate the event message for instructing storage and the even message for instructing reproduction (figure 3, part 301; column 5, lines 28-43; column 6, lines 40-44; column 10, lines 57-62; Note: as for the added limitation found in claim 29, the event message is independent of the specific program, as the message does would not play the same commercial for the parents and children even if they are watching the same program);

transmission unit operable to, transmit a normal program that includes a video stream and an audio stream, and further in accordance with the result of allotment by the allotment unit, repeatedly multiplex (figure 7) program data of the other program with the normal program and transmit a first multiplexed result while multiplexing the program data of the specific program and the script with the normal program and transmitting a second multiplexed result in the preceding time period (column 10, lines 37-41; Note: sending the data whenever there is spare bandwidth is being interpreted

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as being equivalent to repeatedly sending data), and repeatedly multiplex the program data of the specific program and the script with the normal program and transmit the second multiplexed result in the reproduction time period (column 10, lines 37-41),

and control unit operable to control the transmission unit to transmit event message for instructing storage in the preceding time period and to transmit the event message for instructing reproduction at the starting time (figure 3, part 301; column 5, lines 28-43 column 6, lines 40-44; column 10, lines 57-62),

wherein the specific program has the program data that relates to a commercial message which is inserted in the normal program (column 6, lines 40-44), and the reproduction time period of the specific program is the same as a broadcast time period of the commercial message (column 7, lines 41-46; Note: Eldering shows that a commercial could be broadcast at 1.5 Mbps, while the program itself would require 27-155 Mbps. If the commercial was 0.5 minutes, and the program was 29.5 minutes than the program would need to be broadcast at 88.5 Mbps (if the program and commercial were shown at the same resolution), which falls within the range of 27-155 Mbps and is interpreted as the commercial and the program being broadcast during the same time period).

Eldering does not disclose a system with script generating means for generating, (b) when receiving an event message for instructing reproduction, a script instructing the receiving apparatus to reproduce the program data of the specific program in a case where the program data of the specific program has been stored in the storage unit; and

wherein each script being automatically stored when the receiving apparatus receives the script; and

wherein the data is transmitted in a carousel format.

In an analogous art, Suzuki teaches a system with script generating means for generating, (b) when receiving an event message for instructing reproduction, a script instructing the receiving apparatus to reproduce the program data of the specific program in a case where the program data of the specific program has been stored in the storage unit (column 23, lines 22-25; Note: a script is interpreted as being a set of instructions for an application (Microsoft Computer Dictionary) and the instructions taught by Suzuki are interpreted as being equivalent to a script).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use the reproduction controls from Suzuki in the broadcasting apparatus disclosed in Eldering. The motivation for doing this would have been to enable the cable network to control which programs were authorized to play on which subscriber's systems.

Eldering and Suzuki do not disclose a system wherein each script being automatically stored when the receiving apparatus receives the script; and

wherein the data is transmitted in a carousel format.

In an analogous art, Allibhoy teaches a system wherein each script being automatically stored when the receiving apparatus receives the script (figure 3, part 110; column 5, line 63 to column 6, line 19; Note: as every script received is processed

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by the receiver, this is interpreted as automatically storing the script as processing data requires that the data be stored, if only temporarily in a buffer or processor).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the script storing taught by Allibhoy to the system disclosed by Eldering and Suzuki. The motivation would have been to allow for the distribution system to be simplified by broadcasting scripts to all the receivers, but only the receivers that were meant to receive the script would process it.

Eldering, Suzuki and Allibhoy do not disclose a system wherein the data is transmitted in a carousel format.

In an analogous art, Swix teaches a method for transmitting the data in a carousel format (column 9, lines 32-44).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the carousel transmission taught by Swix to the method disclosed by Eldering, Suzuki and Allibhoy. The motivation would have been that commercials are normally repeated during a single day of broadcasting, where a carousel format allows for a efficient way to transmit the data.

Claims 9, 12, 15-23 and 29 are rejected on the same grounds as claim 1.

Referring to claim 4, Eldering discloses an apparatus of Claim 1, further comprising: a storage unit for storing as the program data of the specific program (a) first contents data that makes up the specific program (figure 5, "AD1") and (b) second contents data that is different from the first contents data in part (figure 5, "AD2"),

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wherein the transmission unit transmits the first contents data in the preceding time period and transmits the second contents data in the reproduction time period of the specific program (column 7, lines 29-34).

Referring to claim 11, Eldering discloses an apparatus of Claim 9, further comprising: storage unit operable to store as the program data of the first specific program (a) first contents data that makes up the first specific program (figure 5, "AD1") and (b) second contents data that is different from the first contents data in part (figure 5, "AD2"), wherein the transmission unit transmits the first contents data in a time period other than the first time period in the total time period, and transmits the second contents data in the first time period (column 7, lines 29-34).

Referring to claim 14, Eldering discloses an apparatus of Claim 12, further comprising: storage unit operable to store as the program data of the first specific program (a) first contents data that makes up the first specific program (figure 5, "AD1") and (b) second contents data that is different from the first contents data in part (figure 5, "AD2"), wherein the transmission unit transmits the first contents data in a time period preceding to the first time period in the total time period, and transmits the second contents data the first time period (column 7, lines 29-34).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/
Supervisory Patent Examiner, Art
Unit 2623

JS